

United States Court
Southern District of Texas
FILED
AR OCT 22 2002
Michael N. Milby, Clerk

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Consolidated Lead No. H-01-3624✓

Civil Action No. G-02-0299

¹ Capitalized terms used herein have the same meaning ascribed in JPMorgan Chase's Opposition to Plaintiffs' Motion for Reconsideration and Request for Permission to Appeal Pursuant to 28 U.S.C. § 1292(b).

1102

bankruptcy proof of claim further evidencing the relatedness of this action to the Enron bankruptcy and, therefore, this Court's jurisdiction.

ARGUMENT

POINT I

JPMORGAN CHASE HAS NOT ASSERTED CLAIMS IN TEXAS STATE COURTS

In a final desperate attempt to have this case remanded to state court, Plaintiffs contend that JPMorgan Chase has asserted claims against former Enron officers and employees in Texas state court. *See* Plaintiffs' Reply at 12. However, the Committee of Unsecured Creditors in the Enron bankruptcy filed the lawsuit, not JPMorgan Chase. *Id.* *See also Official Committee of Unsecured Creditors of Enron Corp. v. Fastow*, No. 02-10-06531-CV (9th Judicial District Court of Montgomery County, Texas). JPMorgan Chase is one of 15 members of that Committee, whose deliberations are confidential. In any event, the Enron Creditors' Committee Action has been properly removed to federal court as it is, like the instant action, "related to" the Enron bankruptcy in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§1334 and 1452. *See* Notice of Removal filed in *Official Committee of Unsecured Creditors of Enron Corp. v. Fastow*, Civil Action No. H-02-3939.

POINT II

THIS ACTION DIRECTLY IMPACTS PENDING CLAIMS CURRENTLY BEFORE THE BANKRUPTCY COURT

The Southern District of New York Bankruptcy Court set October 15, 2002, as the date for filing proofs of claim against the Enron estate. JPMorgan Chase attaches hereto as Exhibit A a copy of the Proof of Claim of J.P. Morgan Chase & Co., filed on October 11, 2002, asserting its claims for contribution and indemnity against Enron which form a part of the basis for this Court's bankruptcy "related to" jurisdiction.

Conclusion

For the reasons stated above, and the reasons stated in JPMorgan Chase's Revised Opposition, Defendant JPMorgan Chase respectfully requests that this Court deny Plaintiffs' Motion for Reconsideration and Request for Permission to Appeal Pursuant to 28 U.S.C. § 1292(b), and that it provide to JPMorgan Chase such other relief as it may deem just and proper. Pursuant to Local Rule 7.5, JPMorgan Chase requests oral argument of this motion.

Dated: Houston, Texas
October 22, 2002

Respectfully submitted,

MITHOFF & JACKS, L.L.P.

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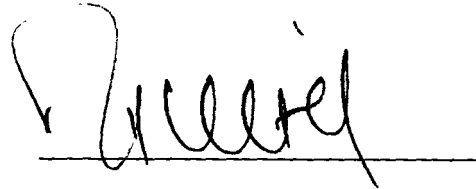
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Defendant's Surreply has been served by mail upon the following this 22nd day of October, 2002:

Andrew J. Mytelka
State Bar No. 1476700
Greer, Herz & Adams, L.L.P.
One Moody Plaza, 18th Floor
Galveston, Texas, 77002

A handwritten signature in black ink, appearing to read "A. Mytelka", is written over a horizontal line.

The Exhibit(s) May
Be Viewed in the
Office of the Clerk